

FILED

ENTERED

LODGED

RECEIVED

OCT 03 2005 ES



AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

05-CV-01662-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J.C., individually,

Plaintiff,

vs.

SOCIETY OF JESUS, OREGON PROVINCE, an
Oregon Corporation,

Defendant.

C05-1662 JLR

No.

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §
1441(B)

(DIVERSITY OF CITIZENSHIP)

TO: Clerk of the Court

AND TO: Michael T. Pfau of Gordon, Thomas, Honeywell et al, attorneys for Plaintiff

PLEASE TAKE NOTICE that defendant Society of Jesus, Oregon Province hereby
removes to this Court the state court action described below:

1. On September 1, 2005, an action was commenced in the Superior Court of
the State of Washington in and for the County of King, entitled J.C. vs. Society of Jesus,
Oregon Province, Case No. 05-2-29071-4. A copy of the Complaint from that action is
attached hereto as Exhibit "A."

2. Defendant's attorneys, Schwabe, Williamson & Wyatt, P.C., first received
copies of the Complaint and Summons on September 7, 2005. Schwabe, Williamson &
Wyatt, P.C. accepted service on behalf of Defendant. A copy of the Summons is attached
hereto as Exhibit "B."

NOTICE OF REMOVAL - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre, Suite 2010
1420 Fifth Avenue
Seattle, WA 98101-2339
Telephone (206) 622-1711

1 3. Besides the attached Complaint and Summons, no other pleadings, process
2 or orders have been filed or served in this case. This Notice of Removal is timely because
3 it is filed within 30 days of the date of service on Defendant and is the first pleading filed
4 by Defendant in this matter.

5 4. The Superior Court of the State of Washington in and for the County of
6 King is located within the Western District of Washington, at Seattle. Therefore, venue is
7 proper because this Court is the "district and division embracing the place where such
8 action is pending." 28 U.S.C. § 1441(a); 28 U.S.C. § 128. Additionally, Plaintiff's claims
9 set forth events that allegedly occurred in Seattle, Washington.

10 5. This Court has original jurisdiction of this action pursuant to 28 U.S.C.
11 § 1332, which provides for original jurisdiction in cases in which there is diversity of
12 citizenship between parties and the amount in controversy exceeds \$75,000.

13 6. Plaintiff has asserted a claim against Society of Jesus, Oregon Province, a
14 foreign corporation, which is incorporated in Oregon and has its headquarters and principle
15 place of business in Portland, Oregon. (*See* Complaint, ¶ 2.2.)

16 7. Plaintiff is a resident of the State of Washington, residing in the County of
17 King. (*See* Complaint, ¶ 2.1.)

18 8. Plaintiff does not allege a specific amount of damages in the Complaint.
19 However, Plaintiff claims compensation for special damages, general damages, attorney
20 fees, prejudgment interest, costs, and exemplary damages. Additionally, Plaintiff's most
21 recent demand to Defendant was well in excess of \$75,000.

22 9. Defendant Society of Jesus, Oregon Province is the only defendant that has
23 been served with a Summons and Complaint in this action.

24 ///

25 ///

26 ///

NOTICE OF REMOVAL - 2

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre, Suite 3010
1420 Fifth Avenue
Seattle, WA 98101-2338
Telephone (206) 622-1711

1 10. A copy of this Notice of Removal will be filed with Clerk of the Superior
2 Court for King County, Washington, and a copy has been served on the attorney for
3 Plaintiff, as indicated on the attached Certificate of Mailing.

DATED this 3rd of October 2005.

Thomas V. Dulcich WSBA #80210
Mario J. Madden WSBA #30966
SCHWABE WILLIAMSON & WYATT, P.C.
1420 Fifth Ave., Suite 3010
Seattle, WA 98101-2393
Telephone: (206) 622-1711
Facsimile: (206) 292-0460
E-mail: tdulcich@schwabe.com
mmadden@schwabe.com

*Attorneys for Defendant Society of Jesus,
Oregon Province*

•

1

1

-

1

1

1

1

1

2

2

2

2

2

2

2

NOTICE OF REMOVAL - 3

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre, Suite 3010
1420 Fifth Avenue
Seattle, WA 98101-2399
Telephone (206) 622-1711

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 2005, I caused to be served the foregoing

3 Notice of Removal Action Under 28 U.S.C. § 1441(b) (Diversity of Citizenship)

on the following party at the following address:

Michael T. Pfau, WSBA #24649
Gordon, Thomas, Honeywell,
Malanca, Peterson & Daheim, LLP
600 University #2100
Seattle, WA 98101
Telephone: 206-676-7500
Facsimile: 206-676-1515

10 by:

- U.S. Postal Service, ordinary first class mail
 - U.S. Postal Service, certified or registered mail,
return receipt requested
 - hand delivery
 - facsimile
 - electronic service
 - other (specify) _____

Karen L. Whitehead

CERTIFICATE OF SERVICE - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre, Suite 3010
1420 Fifth Avenue
Seattle, WA 98101-2939
Tel: (206) 467-4741

EXHIBIT A

1
2
3
4
5
6
7 RETURN COPY

RECEIVED

4 SEP 7 2005

5 Schwabe, Williamson & Wyatt

RECEIVED

In King County Superior Court Clerk's Office

6
7
8 SEP - 1 2005

9 Casner Section
10 Superior Court Clerk

11
12 SUPERIOR COURT OF THE STATE OF WASHINGTON
13 FOR KING COUNTY

14 J.C., individually,

15 05-2-29071-4 SPA

16 NO.

17 COMPLAINT FOR DAMAGES

18 vs.

19 SOCIETY OF JESUS, OREGON PROVINCE,
20 an Oregon Corporation,

21 Defendant.

22
23 COMES NOW Plaintiff J.C. by and through his attorneys, Gordon, Thomas,
24 Honeywell, Malanca, Peterson and Daheim, LLP, and Michael T. Pfau, and hereby state and
25 allege as follows:

26 I. INTRODUCTION

1.1 Father Michael Toulouse was an ordained Roman Catholic priest with the
Society of Jesus, Oregon Province. Toulouse was an influential member of the Jesuits with
power and authority especially in academic circles. Toulouse was also a child molester who
posed a continual threat to adolescent and pre-adolescent boys.

1.2 Plaintiff J.C. was sexually abused by Toulouse when Toulouse was a priest
serving Seattle University.

COMPLAINT FOR DAMAGES - 1 of 7
(1295030 v07.doc)

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 820-8800 • FAX: (253) 820-9948

1.3 Defendant Society of Jesus, Oregon Province maintained authority, control and supervision over Toulouse during the time he molested J.C.

1.4 J.C. brings this action to remedy broken trust, loss of innocence and physical and mental anguish he experienced and continues to experience as a result of the Defendant's acts and omissions.

II. PARTIES

2.1 Plaintiff J.C. currently resides in King County, Washington. J.C. was a minor at the time of the sexual abuse and exploitation complained of herein and lived in King County, Washington.

2.2 Defendant, Society of Jesus, Oregon Province, is an Oregon non-profit corporation doing business in Washington State. The Oregon Province encompasses a five-state area including Alaska, Oregon, Idaho, Montana and Washington. The Society of Jesus, Oregon Province, serves at universities, including Seattle University, schools and parishes around the Northwest. The Provincial Office, headquarter of the province, is located in Portland, Oregon.

2.3 Michael Toulouse was a Jesuit priest from the Oregon Province serving in Washington State. Upon information and belief, Toulouse was a long time member of Seattle University's Department of Philosophy, in addition to his role as a priest and spiritual counselor at the time of the abuse complained of herein. Upon information and belief, Toulouse died in 1976.

**COMPLAINT FOR DAMAGES - 2 of 7
(1295030.v07.dog)**

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98404-1157
(253) 620-0300 FAXSIMILE (253) 620-0365

III. JURISDICTION AND VENUE

3.1 The events giving rise to this lawsuit including the acts and/or omissions complained of herein occurred in King County, Washington. Accordingly, Washington Superior Court has jurisdiction over this matter and venue is proper in King County.

IV. STATEMENT OF FACTS

4.1 Michael Toulouse was a Jesuit Priest serving Seattle University, under the direction, control and supervision of the Defendant Society of Jesus, Oregon Province during the 1960s and 1970s.

4.2 During that time, Toulouse was also a respected member of the Seattle University faculty in the Department of Philosophy. Seattle University still today conducts a lecture series it calls "The Michael Toulouse, SJ Memorial Lecture" series within its Philosophy Department.

4.3 Also during this time, Michael Toulouse, while under the control and supervision of the Society of Jesus, Oregon Province, used his position as a Catholic Priest and faculty member of Seattle University to engage in a pattern of sexual molestation and exploitation of children.

4.4 Upon information and belief, Defendant Oregon Province knew of Toulouse's propensity toward child molestation during the time Plaintiff J.C. was molested by Fr. Michael Toulouse.

4.5 On or about 1968, when Plaintiff J.C. was approximately 12 years-old, Toulouse sexually assaulted and exploited J.C.

4.6 Toulouse took J.C. to the Jesuit residence at Seattle University, where Toulouse pushed J.C. onto a couch and sexually molested him.

V. CAUSES OF ACTION

First Cause of Action: Negligence of the Society of Jesus, Oregon Province

5.1 Plaintiff realleges and incorporates the paragraphs set forth above.

5.2 At all times material herein Michael Toulouse served as a Jesuit Priest for the Society of Jesus, Oregon Province and was under the Oregon Province's supervision and control.

5.3 Prior to Toulouse molesting Plaintiff J.C., the Oregon Province knew or should have known that Toulouse had a propensity to engage in sexual acts with minor children and that he had sexually molested adolescent or pre-adolescent boys by exploiting his position as a priest. The Oregon Province knew or should have known that Toulouse would continue to exploit his status and offices within the Catholic Church to molest more children if allowed to continue to serve as a priest.

5.4 The Oregon Province negligently supervised and retained Toulouse as a priest when they knew or should have known of Toulouse's pedophilic tendencies and his sexual abuse of young children.

5.5 The Oregon Province negligently failed to warn parents and members of the Catholic community of Toulouse's sexually abusive behavior toward children.

5.6 Upon information and belief Defendant Society of Jesus, Oregon Province knew or should have known that a number of Catholic Priests displayed signs and symptoms associated with pedophilia and the sexual abuse of minor children. This Defendant failed to

timely adopt policies and procedures to identify potential and actual sexual offenders, prevent their ordination and/or remove them from the priesthood.

5.7 Defendant Society of Jesus, Oregon Province, failed to properly investigate Michael Toulouse's background to ascertain whether he was suitable to be placed in a position of trust and confidence among children.

5.8 Defendant Society of Jesus, Oregon Province, failed to take proper measures, including removing Toulouse from the ministry, limiting his exposure to children, and properly monitoring him after it received complaints of his inappropriate sexual behavior with adolescent boys.

5.9 As a direct and proximate result of the Oregon Province's negligent acts and omissions, Plaintiff J.C. was sexually assaulted, molested and otherwise exploited by Michael Toulouse. J.C. suffered and continues to suffer damages for pain and suffering, extreme physical and emotional and psychological distress and other general and special damages in the amount to be proven at trial.

Second Cause of Action: Negligent Infliction of Emotional Distress by the Society of Jesus, Oregon Province

5.10 Plaintiff realleges and incorporates the paragraphs set forth above.

5.11 The Society of Jesus, Oregon Province negligent acts and omissions caused Plaintiff emotional distress resulting from Michael Toulouse's sexual abuse and exploitation of L.C.

5.12 As a direct and proximate result thereof Plaintiff J.C. has been and continues to be physically and psychologically damaged and experiences mental anguish, humiliation and emotional and physical distress all in an amount to be proved at trial.

1 **Third Cause of Action: Equitable Estoppel and Fraudulent Concealment**

2 5.13 Plaintiff realleges and incorporates the paragraphs set forth above.

3 5.14 Defendant Society of Jesus, Oregon Province engaged in a plan of action to
4 cover up and otherwise conceal incidents of sexual abuse of minors by priests which
5 prevented disclosure, prosecution and civil litigation including but not limited to: denial of
6 abuse; reassignment and/or transfer of abuse of priests; coercion of victims and their families;
7 and, failure to seek out and redress victims and their injuries. Based on these actions the
8 Defendant Oregon Province engaged in fraudulent concealment and is equitably estopped
9 from asserting a defense of limitations.

10 **Fourth Cause of Action: Violation of RCW 9.68A, Sexual Exploitation of Children**

11 5.15 Plaintiff realleges and incorporates the paragraphs set forth above.

12 5.16 Michael Toulouse's actions of sexually assaulting and exploiting Plaintiff J.C.
13 violated RCW 9.68A, the Sexual Exploitation of Children Act, including RCW 9.68A.040,
14 and 9.68A.090.

15 5.17 Toulouse's violations of RCW 9.68A, the Sexual Exploitation of Children Act,
16 were done with the Oregon Province's knowledge and acquiescence. Accordingly, under
17 RCW 9A.08.030, Defendant Society of Jesus, Oregon Province violated RCW 9.68A as well.

18 5.18 The Plaintiff is therefore entitled to an award of attorneys' fees and costs
19 against the Defendant pursuant to 9.68A.130.

20 **Fifth Cause of Action: Respondeat Superior**

21 5.19 Plaintiff re-alleges the paragraphs set forth above.

22 5.20 During the relevant time period, the sexual abuse of minors by priests within
23 the Catholic Church and the Society of Jesus was so pervasive that it cannot be said such

1 conduct by priests was unforeseen or so far outside the predictable behavior to prevent the
2 Society of Jesus, Oregon Province from being vicariously liable for such conduct. The
3 Society of Jesus, Oregon Province therefore is vicariously liable on the basis of Respondent
4 Superior for the conduct of Father Toulouse as described herein.

5 **VI. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff J.C. prays that the Court enter a judgment against the
7 Defendant on Plaintiff's behalf, for the following:

- 8 1. For special damages resulting from medical treatments, lost earning and lost
9 earning capacity and the expenses of medication and other special expenses, both in the past
10 and continuing into the future in amounts to be determined at the time of trial;
11
12 2. For all general damages regarding physical, mental and emotional upset and
13 disturbance and behavior disorders resulting from the acts complained of herein;
14
15 3. For such attorneys fees, prejudgment interest, costs and exemplary damages as
16 may be provided by law; and
17
18 4. For such other and further relief as this Honorable Court determines as just and
equitable.

19 Dated this 1st day of September, 2005.

20 GORDON, THOMAS, HONEYWELL,
21 MALANCA, PETERSON & DAHEIM LLP

22 By _____
23

24 Michael T. Pfau, WSBA No. 24649
25 Attorneys for Plaintiff

26 COMPLAINT FOR DAMAGES - 7 of 7

(1295030 v07.doc)

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 820-8500 - FAX/SIMILE (253) 820-6666